

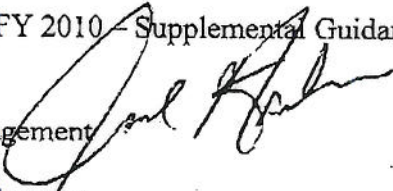


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 07 2010

MEMORANDUM

OFFICE OF
WATER

SUBJECT: Section 106 Allocation for FY 2010 - Supplemental Guidance
FROM: James A. Hanlon, Director
Office of Wastewater Management 
TO: Regional Water Division Directors

Purpose:

This memorandum provides supplemental guidance for the implementation of the Section 106 funding provided by the FY 2010 appropriation. This supplemental guidance is to be used in conjunction with the March 23, 2010 memorandum Section 106 Allocation for FY 2010.

Background:

The FY 2010 appropriation bill includes an increase of \$10,769,000 for the Section 106 Program. The conference report language for the FY 2010 appropriations bill includes the following:

"The Agency is directed to ensure that the increased funds are used to strengthen State permitting and enforcement efforts and to ensure that these funds supplement and expand, not supplant, base State enforcement program resources."

On March 23, 2010, EPA provided guidance on how to apply for the additional funds, and requirements for the use, tracking and report out on permitting and enforcement funds. These requirements are:

1. Separate identifiable task(s) in work plan and budget for this funding - the activities in the work plan that support permitting and enforcement must be separate tasks and a separate line item in the budget. There is no requirement to track these additional funds once the work plan has been approved. However, Regions are expected to ensure the level of effort proposed in the work plan is appropriate for the tasks proposed.

2. Establish identifiable outputs and outcomes – The permitting and enforcement activities identified in the work plan for these funds must have distinct, identifiable outputs and/or outcomes.
3. Completion report – Grantees must report on the permitting and enforcement activities (outputs and/or outcomes) separately in their annual reports.
4. Supplement and expand, not supplant – The Conference Report explicitly directed EPA “to ensure that these funds supplement and expand, not supplant, base State enforcement program resources.” Applications for the supplemental Section 106 funding must include the following statement:

“By submitting this application, the (Name of State, Territory, ICC or Tribe) certifies that the [\$X] increased funds will be used to strengthen permitting and enforcement efforts and to ensure that these funds supplement and expand, not supplant, base permitting and enforcement program resources.”

Supplemental Guidance

Since the guidance was issued, a number of states have expressed concern with the requirement to provide the MOE, defined in the guidance as “the amount the State/ICC has expended from all State/ICC sources on water pollution control programs during the most recent twelve month accounting period.” Specifically, some states that include Section 106 funds in a Performance Partnership Grant (PPG) indicated they no longer have accounting systems that will allow them to determine the actual spending on water pollution control programs, and/or gathering that information would create a burden. Other states indicated that available accounting systems do not account for budgeted costs and/or expenditures by program or media.

The request for state MOE is in response to the Report language that directed EPA to ensure the additional funds supplement and expand, not supplant, base state enforcement program resources. EPA believes state budget/expenditures data is an important consideration in meeting the intent of the Report language, as well as fundamental to sound program management. However, the Report language also intended these funds to be used in FY 2010 to support permitting and enforcement activities. Therefore, the requirement for providing MOE will be retained and modified in the following manner.

- Those states that have already provided the MOE information, or can readily provide the MOE information with their applications, will have met the requirements for the FY 2010 permitting and enforcement funds. In this regard, the March 23 guidance does not impose, for MOE purposes, a one-size-fits all definition of a water pollution control program. Instead, it gives States flexibility to define their particular water pollution control program.

- If a state cannot provide the MOE due to a lack of accounting systems or burden, they may provide the budgeted amount for their water pollution control program for the twelve month accounting period with a certification that the budgeted amount does not represent a reduction compared to previously budgeted amounts. In addition, these states will be required to provide an additional certification statement in their final report on the use of these funds. This certification statement will confirm that the additional funds were used to enhance permitting and enforcement activities.
- If a state cannot provide the MOE expenditure amount or the budgeted amount for their water pollution control programs due to a lack of accounting systems or burden, the application for the permitting and enforcement funds should provide in the required certification statement a description of how the state will ensure the FY 2010 funds will supplement and not supplant existing permitting and enforcement resources. In addition, these states will be required to provide an additional certification statement in their final report on the use of these funds. This certification statement will confirm that the additional funds were used to enhance permitting and enforcement activities.

EPA and the National Water Program continue to support state flexibility and the use of Performance Partnership Grants to meet the programmatic and financial demands that are on states in these difficult financial times. We believe this supplemental guidance meets those objectives as well as the Congressional intent for states to maintain their base enforcement programs.

We look forward to working with states to improve and strengthen water pollution control programs. If you have any questions, please contact me at (202) 564-0748, or have your staff contact Ben Hamm at (202) 564-0648.

cc: Lauren Willis, OGC
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Howard Corcoran, OGD
Section 106 Regional Coordinators
Section 106 Tribal Coordinators